IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 4566 of 2007(R)

PETITIONER:

THE MULLAKKODI CO-OPERATIVE RURAL BANK LTD.NO.F.1230, H.O.KOLACHERRY MUKKU, KANNUR DISTRICT, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.O.D.SIVADAS.

RESPONDENTS:
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1. **THE MANAGING DIRECTOR, KERALA STATE CO-OPERATIVE RUBBER MARKETING FEDERATION (RUBBER MARK), GANDHI NAGAR, KOCHI.**

2. **THE KERALA STATE CO-OPERATIVE RUBBER MARKETING FEDERATION, GANDHI NAGAR, KOCHI, REPRESENTED BY ITS MANAGING DIRECTOR.**

3. **THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.**

BY ADV. SRI.BABU KARUKAPADATH,
SMT.M.A.VAHEEDA BABU,
SRI.JAGAN GEORGE,
SRI.P.E.ANTONY,
GOVT. PLEADER SRI. P.K. RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, ALONG WITH W.P.(C). NO. 15619/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.4566/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER DTD. 22/09/2005 ISSUED BY THE PETITIONER BANK TO THE R.1.

EXT.P.2: COPY OF THE ACKNOWLEDGEMENT DTD. 24/11/2005 FOR THE FIXED DEPOSIT RECEIPT NO. FD/04780 DTD. 10/03/2005 ISSUED BY THE R.1. TO THE PETITIONER BANK.

EXT.P.3: COPY OF THE COMMUNICATION DTD. 22/02/2006 ISSUED BY THE PETITIONER BANK TO THE R.1.

EXT.P.4: COPY OF THE LETTER DTD. 22/09/2006 ISSUED BY THE R.1. TO THE PETITIONER BANK.

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE JUDGMENT DTD. 08/06/2006.

EXT.R4.B: COPY OF THE JUDGMENT OF THE DIVISION BENCH OF THE HONOURABLE HIGH COURT IN W.A. NO. 1202/2007 DTD. 24/05/2007.

//TRUE COPY//

prv.

K. M. JOSEPH, J.

W.P.C. NO. 4566 OF 2007 R

Dated this the 22nd June, 2007

JUDGMENT

Case of the petitioner, in brief, is as follows:

Petitioner is a Co-operative Rural Bank. It deposited a sum of Rs.50 Lakhs before the first respondent on 10.3.2005 for a term of six months. Upon expiry of the term, respondents are not taking steps to disburse the Fixed Deposit along with interest. Therefore, the prayer in the Writ Petition is for a direction to respondents 1 & 2 to disburse Rs.50,00,000/= with interest at the rate of 7.5% from 10.3.2005 to 9.9.2005 and thereafter at the rate of 13% till the date of payment by closing the Fixed Deposit Receipt No.FD/04780 dated 10.3.2005. Action is also sought against respondents 1 & 2. According to petitioner, the FD became matured on 9.9.2005. By Ext.P1 letter, request was made to disburse the FD amount with interest. Ext.P2 is the acknowledgment dated 24.11.2005. In Ext.P2 what is stated is as follows:

> *"We have received Fixed Deposit Receipt No.FD/04780 dt. 10.03.05 for Rs.50.00 Lakhs for closure."*

But, the amount is not paid. The petitioner Bank is also not in a position to provide loans to its customers. The Director Board also decided to take legal action as evident from Ext.P3 request. The further case is that a Cheque for Rs.4 Lakhs was given as interest. Case of the petitioner, in short, is that the petitioner Bank has not requested the second respondent to renew the Fixed Deposit and there is no justification for issuing Cheque for Rs.4 Lakhs as interest and the same was not encashed by the Bank.

2. Case of respondents 1 & 2 in the Counter Affidavit, inter alia, is as follows:

> *"The further allegation that the petitioner Bank provided as Fixed Deposit to the 2nd respondent for a sum of Rs.50 lakhs on 10.3.2005 and further that the duration of term of the fixed deposit was 6 months are false and baseless. The*

rate of interest was never reduced unilaterally as sought to be projected in the Writ Petition."

3. Petitioner has filed a Reply Affidavit denying the allegations. Petitioner has also produced Ext.P4 dated 22.9.2006 issued by the respondent Society. In Ext.P4, it is stated that the FD got due on 10.09.2005 and requested the petitioner to renew the FD to any of the Schemes mentioned. Interest rates are also mentioned. FD renewal application also was enclosed.

4. Shri O.D. Sivadas, learned counsel for the petitioner would point out that this is a case where there cannot be any dispute having regard to Ext.P2 read with Ext.P4. He would also say that no document is produced by the respondent Society to show that the petitioner was agreeable for renewal of the original period of the FD as contended by respondents 1 & 2. On the contrary, he would contend that Exts.P2 and P4 would clearly establish the case of the petitioner that there is no such agreement as contended by the respondent Society.

5. Smt. Waheeda Babu, learned counsel appearing on behalf of the respondent Society, on the other hand, would rely on Ext.R4(b) Judgment of the Division Bench of this Court, wherein the Division Bench dismissed the Writ Petition which was allowed by the learned Single Judge in similar circumstances. On a perusal of Ext.R4(b), it is clear that the Division Bench of this Court has taken the view that the Writ Petition could not have been entertained, when an alternate and efficacious remedy was available for the contesting respondent. It is also stated that Section 69 of the Kerala Co-operative Societies Act provides that the disputes between the parties are to be resolved by filing appropriate dispute before the Registrar of Co-operative Societies. No doubt, Shri O.D. Sivadas, learned counsel for the petitioner pointed out that the said decision may not apply on all fours in the facts of this case. But, I would think that in view of the the principle of the Judgment and in the nature of the contentions taken, it would

not be appropriate on my part, particularly in the light of Ext.R4 (b) Judgment, to intervene in the matter. This is not a case where, there is a case of statutory provisions being violated as such. I decline jurisdiction and the Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

kbk.